



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No. 4460-99
4 February 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 12 November 1964 for a minority enlistment at age 17. The record reflects that you were advanced to FA (E-2) and served for nine months without incident. However, during the 24 month period from August 1965 to August 1967 you received four nonjudicial punishments and were convicted by a summary court-martial. Your offenses consisted of two instances of failure to obey a lawful regulation, three brief periods of unauthorized absence (UA) totalling about 24 days, and two instances of missing movement. During this period, you were also advanced to FN (E-3) and were authorized the Vietnam Service Medal for service on board the USS COMSTOCK (LSD-19).

On 17 August 1967, two service members made statements to an agent of the Naval Investigative Service (NIS) that you had smoked marijuana and used lysergic acid diethylamide (LSD). The following day you were notified that you were being considered for discharge under other than honorable conditions because of your possession and use of marijuana and LSD. You were advised

of your procedural rights and waived your rights to be represented by counsel and to present your case to an administrative discharge board (ADB). On 30 August 1967, the commanding officer recommended an undesirable discharge by reason of unfitness. An enlisted performance and evaluation board convened in the Bureau of Naval Personnel on 18 September 1967 and recommended separation with an undesirable discharge by reason of unfitness. Thereafter, the Chief of Naval Personnel directed an undesirable discharge by reason of unfitness due to "drug addiction, habituation or the unauthorized use or possession of narcotics, hypnotics, ... hallucinogens and other similar known harmful or habit-forming drugs." You were so discharged on 6 October 1967.

In its review of your application, the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, Vietnam service, and the fact that it has been more than 22 years since you were discharged. The Board noted your contentions to the effect that you never used or possessed drugs at any time in the Navy and in order to avoid trial by general court-martial, you were forced to sign a document stating you used and possessed drugs and accepting an undesirable discharge. You claim that you became a conscientious objector after serving in Vietnam and signed the papers for an undesirable discharge because you did not want go back to Vietnam. You assert that amnesty was granted by the President to hundreds of servicemen who were discharged under similar circumstances.

The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of four NJPs, a summary court-martial conviction, and the evidence of your use and possession of drugs. The Board noted the aggravating factor that you waived your right to an ADB, the one opportunity you had to show why you should be retained or discharged under honorable conditions. Your contention that you were coerced into accepting an undesirable discharge to avoid trial by general court-martial is neither supported by the evidence of record nor by any evidence submitted in support of your application. Amnesty was granted to deserters and draft evaders during the Vietnam era so they could return to the United States without fear of prosecution. Amnesty did not change the undesirable discharges which most deserters received. The Board concluded that your discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the

Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director